

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
KJLA, LLC)	CSR-8775-M
)	MB Docket No. 13-63
Against CCO SoCal I, LLC)	
)	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: February 18, 2014

Released: February 18, 2014

By the Chief, Media Bureau:

I. INTRODUCTION

1. KJLA, LLC (“KJLA”), licensee of commercial broadcast television station, KJLA, Ventura, CA, filed the above captioned carriage complaint (“complaint”)¹ against CCO SoCal I, LLC, a subsidiary of Charter Communications, Inc. (“Charter”), alleging that Charter failed to satisfy its obligations under the statutory viewability requirement, as outlined in the Commission’s 2012 *Fifth Report and Order* in the DTV cable carriage docket,² when Charter terminated the station’s carriage in analog format on cable systems operated in the Los Angeles Designated Market Area (“DMA”). The complaint requests that the Commission order Charter to resume carriage of the station in analog format. Charter has filed an opposition to this complaint,³ to which KJLA has filed a reply.⁴ In addition, pursuant to a Media Bureau request for evidence to clarify certain aspects of the record,⁵ Charter submitted a supplement with additional information,⁶ to which KJLA responded.⁷ For the reasons discussed below, we deny KJLA’s complaint.

¹ See Petition for Issuance of Order to Show Cause, filed Mar. 5, 2013 (“Petition” or “complaint”). Although styled as a “Petition for Issuance of Order to Show Cause,” we are treating KJLA’s Petition as a carriage complaint because it alleges a violation of the viewability requirement in Section 614 of the Communications Act, 47 U.S.C. § 534(b)(7). We note that the Commission, in the order sunsetting its viewability rule, instructed stations alleging violations of the statutory viewability requirement to file a carriage complaint pursuant to Section 76.61 of the Commission’s rules, 47 C.F.R. § 76.61. See *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules*, CS Docket No 98-120, Fifth Report and Order, 27 FCC Rcd 6529, 6546, ¶ 18 (2012) (“*Fifth Report and Order*”).

² See *id.*

³ Opposition to Petition, filed April 8, 2013 (“Opposition”).

⁴ Reply to Opposition to Petition, filed April 15, 2013 (“Reply”).

⁵ See Letter from Steven A. Broeckaert, Senior Deputy Chief, Policy Division, Media Bureau, FCC to Frederick W. Giroux, Esq., Counsel for Charter (April 19, 2013).

⁶ Letter from Frederick W. Giroux, Esq., Counsel for Charter to Steven A. Broeckaert, Senior Deputy Chief, Policy Division, Media Bureau, FCC (May 9, 2013) (“Charter Supplement”).

⁷ Letter from Barry A. Friedman, Esq., Counsel for KJLA to Steven A. Broeckaert, Senior Deputy Chief, Policy Division, Media Bureau, FCC (May 17, 2013) (“KJLA Supplement Reply”).

II. BACKGROUND

2. Sections 614(b)(7) and 615(h) of the Communications Act of 1934, as amended (the “Act”), require cable operators to ensure that commercial and non-commercial must-carry broadcast stations are “viewable” or “available” to all cable subscribers.⁸ In preparation for the digital television transition, in 2007, the Commission adopted a rule requiring cable operators with hybrid systems⁹ to carry must-carry signals¹⁰ in both digital and analog format to ensure that no analog cable subscribers would lose access to must-carry stations in the wake of the broadcast digital television transition.¹¹ Absent Commission action, the viewability rule was scheduled to sunset on June 12, 2012.¹² In 2012, the Commission released the *Fifth Report and Order*, which allowed the viewability rule to expire as scheduled, with a six-month transitional period, until December 12, 2012, to allow consumers, cable operators, and must-carry broadcasters an opportunity to prepare for the rule’s expiration.¹³ The *Fifth Report and Order* reinterpreted the statutory viewability requirement to permit cable operators to require the use of set-top equipment to view must-carry signals, provided that such equipment is both available and affordable (or provided at no cost).¹⁴ Therefore, effective December 13, 2012, until it completes its transition to all-digital service, a hybrid cable system operator may comply with the statutory viewability requirement by carrying a must-carry signal in a format that is capable of being viewed by analog customers either (1) without the use of additional equipment or (2) alternatively with equipment made available by the cable operator at no cost or at an affordable cost that does not substantially deter use of the equipment.¹⁵ Cable operators are also required to provide advance notice to affected broadcasters and subscribers before terminating analog carriage.¹⁶ On December 27, 2013 the United States Court of

⁸ 47 U.S.C. §§ 534(b) (7), 535(h). This is referred to as the statutory viewability requirement.

⁹ A hybrid system is a cable system that offers both analog and digital cable service to its subscribers. By contrast, an analog-only system or all-digital system provides only analog or digital service, respectively.

¹⁰ Section 614(a) of the Communications Act provides that “[e]ach cable operator shall carry, on the cable system of that operator, the signals of local commercial television stations and qualified low power stations as provided in this section.” 47 U.S.C. § 534(a). Section 615(a), 47 U.S.C. § 535(a), imposes a similar requirement to carry “the signals” of qualifying non-commercial television stations. These provisions are known as the “must carry” provisions of the Communications Act. See 47 U.S.C. §§ 534, 535.

¹¹ See *Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules*, CS Docket No 98-120, Third Report and Order and Third Further Notice of Proposed Rulemaking, 22 FCC Rcd 21064, 21065, ¶ 2 (2007) (“*Third Report and Order*” or “*Third Further Notice*”); see also 47 C.F.R. §§ 76.56(d)(3) – (5) (2008). We note that cable operators that transition to an all-digital system may carry the signal only in digital format. *Id.* at 21070, ¶ 15.

¹² *Id.* at 21070, ¶ 16.

¹³ See *Fifth Report and Order*, 27 FCC Rcd at 6532, 6544-46, ¶¶ 6, 17-18.

¹⁴ See *id.* at 6537, ¶ 11. The Commission sought to “provide hybrid cable system operators the flexibility to best meet the needs of their subscribers during their move to an all-digital system.” *Id.* at 6545, ¶ 18.

¹⁵ *Fifth Report and Order*, 27 FCC Rcd at 6545, ¶ 18. The Commission determined that a monthly cost of \$2 or less for digital equipment would meet the affordability requirement. *Id.* at 6541, ¶ 14.

¹⁶ See 47 C.F.R. § 76.1601 (requiring cable operators to “provide written notice to any broadcast television station at least 30 days prior to either deleting from carriage or repositioning that station. Such notification shall also be provided to subscribers of the cable system.”); 47 C.F.R. § 76.1630(b) (requiring cable operators (i) to notify customers of any changes in rates, programming services or channel positions “as soon as possible in writing”; (ii) to give customers notice at least 30 days in advance of such changes if the change is within the control of the cable operator; and (iii) to notify subscribers 30 days in advance of any significant changes in other information listed in Section 76.1602); see also *Fifth Report and Order*, 27 FCC Rcd at 6544, n.89, ¶ 17.

Appeals for the District of Columbia Circuit upheld the *Fifth Report and Order*.¹⁷

3. On February 12, 2013, Charter terminated carriage of KJLA in analog format and began carrying the station exclusively in digital format on Charter's systems in the Los Angeles DMA, where KJLA is entitled to mandatory carriage.¹⁸ On March 5, 2013, KJLA filed a complaint with the Commission. In its complaint, KJLA alleges that Charter did not meet its obligations under the statutory viewability requirement for terminating carriage of KJLA in analog format. More specifically, KJLA claims that Charter did not properly notify the station or its subscribers about Charter's intent to carry KJLA in only digital format.¹⁹ KJLA further claims that Charter's efforts to provide free equipment to analog subscribers are insufficient.²⁰ Charter responds that it provided the required notifications to both KJLA and its subscribers, and is providing free equipment to requesting customers in accordance with the *Fifth Report and Order*.²¹

III. DISCUSSION

4. As an initial matter, we dismiss KJLA's assertion that Charter's decision to carry only some broadcast stations, such as KJLA, in only digital format, while carrying other broadcast stations in both digital and analog format, violates Section 614(b)(7) of the Act.²² The Commission, in the *Fifth Report and Order*, has already rejected such an interpretation by finding that a hybrid cable system operator may comply with the viewability mandate by carrying a must-carry signal in a format that is capable of being viewed by analog customers with equipment made available by the cable operator at no cost or at an affordable cost that does not substantially deter use of the equipment.²³ Therefore, as long as Charter is carrying KJLA in a format that is capable of being viewed by all of its Los Angeles DMA subscribers with affordable equipment, it is in compliance with the statutory viewability requirement.²⁴ The Commission did not impose a requirement that cable operators carry broadcasters in a uniform format.²⁵ To the extent that KJLA claims that Charter failed to satisfy its obligations under the statutory viewability requirement, we consider those arguments below. However, we decline to revisit here the Commission's settled interpretation of the viewability mandate in Section 614(b)(7).

5. *Broadcaster Notice.* We reject KJLA's contention that Charter provided insufficient notice to the station of Charter's intention to transition KJLA to digital-only. Section 76.1601 of the Commission's rules requires cable operators to provide broadcasters with 30 days written notice "prior to either deleting from carriage or repositioning" a station.²⁶ Leading up to the adoption of the *Fifth Report and Order*, the National Cable and Telecommunications Association ("NCTA"), on behalf of its eight

¹⁷ See *Agape Church, Inc. v. FCC*, No. 12-1334, slip op. at 6 (D.C. Cir. Dec. 27, 2013) ("The FCC's new rule allowing cable operators to offer analog subscribers equipment in lieu of downconversion was within its authority under the statute, supported by reasoned decisionmaking, and properly promulgated pursuant to notice and comment rulemaking procedures in which interested parties should have anticipated that the change was possible.").

¹⁸ Charter Supplement at 1; KJLA Supplement Reply at 1.

¹⁹ Petition at 3-5; Reply 3-6.

²⁰ Petition at 6-8; Reply at 6-7.

²¹ See Opposition at 2-7.

²² Petition at 4-5 (arguing that "Charter's decision to undertake its migration to digital in two phases essentially creates two classes of broadcast stations").

²³ See *Fifth Report and Order*, 27 FCC Rcd at 6537-38, ¶ 11.

²⁴ See *id.* at 6545, ¶ 18.

²⁵ See also *id.* at 6536, ¶ 10 (rejecting argument that reliance on set-top box equipment would allow cable operators to discriminate by providing some, but not all, local signals to analog subscribers).

²⁶ 47 C.F.R. § 76.1601.

largest members, including Charter, voluntarily committed to provide 90 days advanced notice to a must-carry station in the event a cable operator planned to stop carrying the analog version of the station.²⁷ The Commission relied on this commitment in sunsetting the Commission's viewability rule.²⁸ KJLA claims that it received no notice from Charter of its intent to stop carrying KJLA in analog format, though the station states that sometime in November of 2012 it became aware, apparently through "analog subscribers and other affected broadcasters," of Charter's intention to begin carrying KJLA only in digital format.²⁹ In response to KJLA's claim, Charter submits into the record a letter dated November 13, 2012 addressed to KJLA and delivered by Certified Mail.³⁰ The letter provides notification that on or after February 12, 2013 Charter would "convert the analog presentation of your station's primary broadcast signal into a digital format on our cable lineup(s)" and states that "Charter will notify our analog-only customers to inform them of a free or reduced cost digital converter box offer so that they can continue to watch your channel on their analog television set."³¹ While KJLA claims that it "has no evidence of the receipt of the [November 13, 2012] Charter letter,"³² Charter submits a Certified Mail delivery receipt from the United States Postal Service ("USPS") showing delivery of the letter on November 20, 2012 with a signature by Monica Gonzalez, who is identified in a Charter exhibit as a "Purchase Manager" for KJLA.³³ KJLA responds that Ms. Gonzalez is a receptionist employed by KJLA, but that "KJLA management did not receive the November 13, 2012 letter and is not certain what happened to the letter after Ms. Gonzalez apparently signed for it."³⁴ Upon review of the record evidence, we find that the USPS and other documentation sufficiently demonstrates that Charter sent notification to KJLA of its intent to stop providing the station in analog format and that KJLA received such notification on November 20, 2012.³⁵ The record thus provides sufficient evidence that Charter provided advance notice to KJLA regarding the planned carriage change.³⁶

²⁷ See Letter from Rick Chessen, Senior Vice President, NCTA to Marlene H. Dortch, Secretary, FCC (May 17, 2012), filed in MB Docket 98-120.

²⁸ *Fifth Report and Order*, 27 FCC Rcd at 6545, ¶ 17.

²⁹ Petition at 3-4; Reply at 3-4.

³⁰ Opposition at Exhibit 2. We note that Charter's letter to KJLA was sent to the identical address provided for the station by the FCC's Consolidated Data Base System ("CDBS") and the address for the station provided on KJLA's website. See Opposition at Exhibit 1.

³¹ *Id.* at Exhibit 2.

³² Reply at 3.

³³ Charter Supplement at 2, Attachments B and C.

³⁴ KJLA Supplement Reply at 1.

³⁵ KJLA asserts that Charter never separately contacted KJLA to "coordinate the notification of our mutual viewers" as Charter stated it would do in the November 13 letter and the lack of such contact undermines Charter's credibility in claiming that the November 13 letter was in fact delivered. Reply at 3; Charter Opposition, Exhibit 2. Although the record contains no evidence of any further contact from Charter to KJLA beyond the November 13 letter, we disagree that the lack of such contact undermines Charter's credibility regarding the delivery of the November 13 letter to KJLA. As stated above, the third party documentation submitted by Charter showing delivery of the November 13 letter to KJLA is independent, credible evidence that Charter provided actual notice to KJLA of its intent to stop carrying the station in analog format.

³⁶ In a footnote in its Reply, KJLA points out that the delivery date shown on Charter's documents is November 20, 2012, which is less than 90 days before Charter terminated carriage of KJLA in analog format on February 12, 2013. Reply at 3, n.4. We observe that while Charter's notification letter was dated November 13, 2012 – 90 days in advance of the February 12, 2013 carriage change – it was not actually received by KJLA until November 20, 2012 – 82 days in advance of the change and eight days less than the 90 day commitment made by Charter and other cable operators that the Commission relied upon in the *Fifth Report and Order*. We expect cable operators to fully abide by the commitments underlying the *Fifth Report and Order*. The Commission intended the 90-day transition period

6. *Subscriber Notice.* We also reject KJLA's argument that Charter provided insufficient notice to its subscribers about KJLA's transition to digital. Sections 76.1601 and 76.1603(b) of the Commission's rules require cable operators to provide subscribers with a minimum of 30 days advance written notice before making certain carriage changes, such as "deleting from carriage or repositioning" a station or making "any changes in rates, programming services or channel positions."³⁷ On behalf of the eight largest cable operators, including Charter, NCTA committed, as part of the required notifications, to inform affected subscribers "that equipment is required to continue viewing the [digital] must-carry signal and how to obtain that equipment."³⁸ The Commission, in adopting the *Fifth Report and Order*, expressly relied on this commitment in sunsetting the Commission's viewability rule.³⁹ KJLA acknowledges that Charter sent three forms of notification to subscribers leading up to Charter's transition of KJLA to cable carriage in digital format only.⁴⁰ The first notification, which KJLA attached to its complaint, was a message on the front page of Charter bills⁴¹ stating that "Effective on or after February 12, 2013, Charter will offer the following channels exclusively in a digital format. This change will require digital equipment in order to view these channels on all of your television sets. Please call us at 877-616-0294 to acquire a digital receiver or for more information."⁴² KJLA was listed as one of the affected stations on the billing notice.⁴³ The second notification was a "Legal Notice" published in seven newspapers available to subscribers living in areas where must-carry stations, including KJLA, were being transitioned to cable carriage in only digital format.⁴⁴ The newspaper notices used the same language that appeared on the subscriber bills and also listed KJLA as a station being transitioned to carriage in digital format only.⁴⁵ The third notification was a letter that Charter states was sent to affected subscribers on January 10, 2013, which used the same language used on the Charter bills and newspaper notices.⁴⁶ After listing the affected call signs, including KJLA, the letter additionally states, "To help you with this transition we are providing you **2 digital receivers or 2 HD receivers or 2 DVR boxes at no cost for 24**

to afford broadcasters sufficient time to plan and implement a strategy to inform its viewers of the impending transition of the station to cable carriage in only digital format and assist viewers with that transition. *See Fifth Report and Order*, 27 FCC Rcd at 6545, ¶ 17. To fully effectuate the Commission's intent, we therefore clarify that, on a going-forward basis, the 90-day period runs from the date that a broadcaster actually receives the advance notice, not from the date the cable operator mails the notice.

³⁷ *See* 47 C.F.R. §76.1601; 47 C.F.R. § 76.1630(b).

³⁸ *Fifth Report and Order*, 27 FCC Rcd at 6545, ¶ 17 (citing Letter from Rick Chessen, Senior Vice President, NCTA to Marlene H. Dortch, Secretary, FCC (June 8, 2012), filed in MB Docket 98-120).

³⁹ *Id.*

⁴⁰ Reply at 4-5.

⁴¹ Charter states this notification was included on the bill sent to affected Charter customers during the period of December 13, 2012 to January 13, 2012. Opposition at 3. The billing exhibit attached to KJLA's petition is dated December 23, 2012 and appears to confirm Charter's assertions about the timing of the notifications, assertions that KJLA does not dispute. Petition at Exhibit A.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Opposition at 5; Exhibit 5. Charter states that these notices were published in the following papers on the following dates: *Big Bear Grizzly* (1/16/13), *Burbank Leader* (1/12/13), *Glendale News Press* (1/12/13), *Press Telegram* (Long Beach) (1/9/13), *Press Enterprise* (Riverside) (1/11/13), *San Gabriel Valley Tribune* (1/16/13), and the *Daily Press* (Victorville) (1/11/13). *Id.* at 5.

⁴⁵ *Id.* at Exhibit 5.

⁴⁶ *Id.* at Exhibit 4.

months.⁴⁷ After discussing some of Charter’s digital program offerings, the letter states, “If you have any questions about upcoming changes to your channel line-up or want to add Charter services, **please call 1-866-974-5133.**”⁴⁸

7. KJLA does not dispute the existence or timeliness of Charter’s three notification efforts; rather it claims that the notifications were insufficient and confusing.⁴⁹ In addition to arguing that the three notifications were generally confusing, KJLA specifically objects to the notice provided by Charter on its customer bills because the bill is “a document most subscribers set aside once they have found the amount listed in the ‘Total Due’ box,” and objects to the January 10 letter on the ground that it contains asterisks without accompanying explanatory text and allegedly confusing fine print.⁵⁰ We find that the three notifications satisfied Charter’s subscriber notice obligations under our rules and the voluntary commitments relied upon by the Commission in the *Fifth Report and Order*. As our rules require, Charter sent or published each of the three above-referenced notices at least 30 days before it transitioned KJLA to cable carriage exclusively in digital format and clearly stated in each of these notices that Charter was making certain changes in the carriage of certain specified stations, including KJLA, to digital format only. Furthermore, Charter satisfied the commitments relied upon in the *Fifth Report and Order*. It stated in all three of its subscriber notifications that “this change [to carry KJLA exclusively in digital format] will require digital equipment in order to view these channels on all of your television sets” and provided a contact number to be used to obtain the necessary equipment.⁵¹ We do not agree with KJLA that the notification language was “short and confusing”; rather we find that it contained all the essential information that our rules and the *Fifth Report and Order* require because it notified subscribers about the KJLA carriage change, informed them that additional equipment would be necessary to continue viewing the station, and provided information about how to obtain such equipment.⁵² KJLA claims that Charter’s subscriber notifications constituted “inadequate notice at best, when one compares these efforts to those of the [broadcast] digital transition, to inform analog subscribers as to the change in their service.”⁵³ Setting aside the factual distinctions between the nationwide broadcast digital television transition and the carriage change at issue here, KJLA’s argument ignores the fact that an entirely different rule, Section 76.1630, which laid out specific DTV broadcast transition notification language to be used by MVPDs,⁵⁴ applied to MVPD subscriber notification during the DTV

⁴⁷ *Id.* (emphasis original and asterisk omitted, see ¶ 7). A box stating “Important Notice” was also included on the right side of the letter which states, “**STARTING ON OR AFTER 2/12/13 some channels will be exclusively offered in digital format. What should you do?** To continue to enjoy these channels, please call a Charter Representative at 1-866-974-5133 to acquire your **2 digital receivers or 2 HD receivers or 2 DVR boxes at no cost for 24 months.**” *Id.* (emphasis original and asterisk omitted, see ¶ 7).

⁴⁸ *Id.* (emphasis original).

⁴⁹ See Petition at 5; Reply at 4-6.

⁵⁰ See Petition at 5; Reply at 5-6.

⁵¹ See Petition at Exhibit A; Opposition at Exhibits 4 and 5.

⁵² To the extent that subscribers had questions about the offer in the January 10 letter, Charter provided, in two different locations on the letter, a phone number for subscriber inquiries. Opposition at Exhibit 5. KJLA observes in a footnote that a “customer that used an electronic payment arrangement would not even receive the bill,” and thus would not see the notification on the billing statement. Reply at 4, n.5. The record is unclear as to whether Charter customers that do not receive paper bills would have received the notification that appeared on the paper billing statement. However, these customers would have had access to the newspaper notifications and the January 10, 2013 letter, which fulfill Charter’s notification obligation. See 47 C.F.R. § 76.1603(e) (“To the extent the operator is required to provide notice of service and rate changes to subscribers, the operator may provide such notice using any reasonable written means at its sole discretion.”).

⁵³ Reply at 5.

⁵⁴ 47 C.F.R. § 76.1630.

transition, while the *Fifth Report and Order* made clear that the MVPD service change notification requirements in Sections 76.1601 and 76.1603(b) applied to Charter's notifications in the case at hand.⁵⁵ Moreover, there is no evidence that Charter subscribers found the notifications confusing or insufficient and we are unaware of any complaints being filed at the Commission regarding Charter's transition of KJLA to digital. To the contrary, KJLA reports that analog subscribers actually notified the station about the impending transition.⁵⁶ In addition, Charter has fulfilled subscriber requests by distributing free digital set-top boxes to more than 5,900 customers in the Los Angeles DMA since it transitioned KJLA to carriage only in digital format this past February.⁵⁷

8. *Equipment Offer.* Finally, we reject KJLA's contention that Charter is failing to offer sufficient low or no cost equipment to analog subscribers wishing to view digital signals. The *Fifth Report and Order* requires that cable operators operating hybrid systems that choose not to offer all must-carry stations in both analog and digital format must ensure that they offer "analog customers the necessary digital equipment at an affordable cost."⁵⁸ The Commission stated that offering digital equipment for free or a monthly fee of no more than \$2 "would satisfy the requirement for affordable equipment because the additional cost, if any, is unlikely to discourage use of this equipment."⁵⁹ In its complaint, KJLA asserts that "rather than offering a free or low-cost DTA or similar low cost equipment to analog subscribers . . . Charter appears to be steering analog subscribers toward a digital package including a number of additional channels at a significantly higher cost."⁶⁰ Charter responded that it is offering free digital equipment to requesting analog customers, as evidenced by its January 10, 2013 notification letter to subscribers offering "2 digital receivers or 2 HD receivers or 2 DVR boxes at no cost for 24 months."⁶¹ Charter does not dispute that its customer service representatives ("CSRs") "promote Charter's various packages"⁶² and explain the benefits of "digitization and the options available to customers."⁶³ Charter "vehemently denies" that its CSRs "are instructed to present Charter's various

⁵⁵ *Fifth Report and Order*, 27 FCC Rcd at 6544, n.89, ¶ 17. The *Fifth Report and Order* also discussed the importance of must-carry stations directly notifying their viewers, "through on-air messages, website postings, mailings or other forms of communications of their choosing – about the planned change in carriage, and about the viewers' options to ensure continued access to the station's programming." *Id.* at 6545, ¶ 17. The record contains no evidence that KJLA provided any notifications to its viewers, despite its admitted knowledge at some unspecified time during November 2012 that Charter intended to transition KJLA to carriage only in digital format. Petition at 3-4. We find it incongruous that KJLA would challenge the sufficiency of Charter's notification efforts while apparently undertaking no notification efforts of its own. We recognize that KJLA's decision whether to notify is viewers is wholly within its discretion. However, KJLA's inaction does not impose additional obligations on Charter above those required by the *Fifth Report and Order*.

⁵⁶ Petition at 3-4 ("In November 2012, KJLA learned of Charter's intention to convert the Station's signal to digital-only format on Charter's cable systems on or after February 12, 2013. Unfortunately, KJLA did not obtain this information from Charter, as required by law, but from analog subscribers and other affected broadcasters.").

⁵⁷ Supplement at 2.

⁵⁸ *Fifth Report and Order*, 27 FCC Rcd at 6540, ¶ 14; *see also id.* at 6536-37, ¶ 11; 6545, ¶ 18

⁵⁹ *Id.* at 6541, ¶ 14.

⁶⁰ Petition at 6. KJLA alleges that this conduct is part of a broader business strategy by Charter "to derive greater revenue from analog subscribers and not merely to replicate the analog subscribers' prior channel lineup." KJLA Supplement Reply at 3; *see also* Petition at 6-7.

⁶¹ Opposition at 5-6; Exhibit 5. Charter also indicated that it is "prepared to extend a free or low-cost set-top box offer if its transition to all-digital operations on any of the systems at issue extends beyond its current [two-year] equipment offer period." Opposition at 7, n.23.

⁶² Opposition at 6.

⁶³ Charter Supplement at 2.

digital packages as the *only* means by which analog subscribers may view recently migrated stations.”⁶⁴ Charter states it provides materials to CSRs regarding the transition of stations to exclusively digital carriage and those materials do not contain statements discouraging customers from taking advantage of free equipment offers or suggesting that free digital equipment should not be made available.⁶⁵ In its Reply, KJLA argues that Charter’s attempt “to turn its analog subscribers into high paying digital subscribers” is evidenced by the fact that Charter is offering subscribers free digital equipment that is more advanced than DTAs.⁶⁶ KJLA also argues that the sufficiency of Charter’s equipment offers can only be evaluated by determining how many of Charter’s analog subscribers have actually obtained digital equipment since Charter began carrying KJLA exclusively in digital format.⁶⁷

9. We find that the record contains insufficient evidence to conclude that Charter is failing to meet its obligations under the *Fifth Report and Order* with respect to its digital equipment offers to analog customers. Charter has presented evidence that it is currently offering free digital equipment to analog customers and we remind Charter that the obligation to provide free or discounted digital equipment to view converted must-carry signals continues for as long as the system remains a hybrid system.⁶⁸ While KJLA complains that Charter is promoting or providing information about its digital services, nothing in the *Fifth Report and Order* prohibits such conduct as long as the free or low cost equipment offer is made clear and is honored by the cable operator. As we discuss above, Charter’s offer was made clear in their notices, and there is no record evidence that Charter’s free equipment offer is not being honored; Charter reports that more than 5,900 subscribers in the Los Angeles area have received one or more free digital set-top boxes since Charter began carrying KJLA exclusively in digital format.⁶⁹ Moreover, we are unaware of any complaints filed at the Commission by Los Angeles area Charter customers alleging issues with Charter’s equipment offers and related conduct and KJLA has not presented any evidence that the station itself has received any such complaints directly from viewers. In addition, while KJLA complains that Charter is failing to offer DTAs, the *Fifth Report and Order* does not require that cable operators deploy DTAs; it only requires that cable operators offer the “necessary equipment” to make all-digital must carry signals viewable to analog customers for free or at an affordable cost.⁷⁰ Charter’s digital equipment offer meets this requirement. Furthermore, we do not agree with KJLA that we need to determine how many of Charter’s former analog customers have taken advantage of the free equipment offer to determine whether or not the offer comports with the *Fifth Report and Order*. The *Fifth Report and Order* requires that must-carry signals be made available by cable operators to analog subscribers “by offering the necessary equipment for sale or lease, either for free or at an affordable cost that does not substantially deter use of the equipment.”⁷¹ We find that Charter has made such an offer and the record evidence indicates that it has honored this offer with regard

⁶⁴ Opposition at 6 (emphasis original).

⁶⁵ Charter Supplement at 2-3.

⁶⁶ Reply at 6.

⁶⁷ *Id.* at 7; KJLA Supplement Reply at 2.

⁶⁸ See *Fifth Report and Order*, 27 FCC Rcd at 6545, ¶ 18 (stating that “after December 12, 2012, an operator of a hybrid system may choose to satisfy the viewability mandate by making must-carry signals available to analog subscribers by offering the necessary equipment for sale or lease, either for free or at an affordable cost that does not substantially deter use of the equipment.”). Thus, Charter must ensure that any free or discounted equipment offers are honored at least until such time as the system in question has been fully converted to all-digital service.

⁶⁹ Charter Supplement at 2. Charter also states that it “knows of no eligible requesting customer that did not receive free equipment.” *Id.*

⁷⁰ See *Fifth Report and Order*, 27 FCC Rcd at 6545, ¶ 18; see also *id.* at 6541, ¶ 14 (observing that Bright House offers “set-top boxes,” as opposed to DTAs, to subscribers for \$1 a month).

⁷¹ *Fifth Report and Order*, 27 FCC Rcd at 6545, ¶ 18.

to approximately 5,900 Charter subscribers in the Los Angeles DMA. Contrary to KJLA's assertion, it is not necessary for the Commission to engage in a further analysis of the number of analog subscribers that actually take advantage of the offer to determine whether the offer complies with the *Fifth Report and Order*.

IV. CONCLUSION

10. For the foregoing reasons, we find that KJLA has failed to demonstrate that Charter violated the statutory viewability requirement of Sections 614(b)(7) of the Communications Act of 1934 or its obligations under the *Fifth Report and Order* and Commission rules.

V. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED**, that pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 614, and Section 76.61 of the Commission's rules, 47 C.F.R. § 76.61, the Petition for Issuance of Order to Show Cause filed by KJLA, LLC, licensee of commercial broadcast television station KJLA, Ventura, CA against CCO SoCal I, LLC, a subsidiary of Charter Communications, Inc., **IS DENIED**.

12. This action is taken under authority delegated by Section 0.283 of the Commission's rules.⁷²

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau

⁷² 47 C.F.R. § 0.283.